

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CINDY NUGENT-DAVI,

Plaintiff,

v.

CLARK COUNTY, a County existing under
the laws of the State of Nevada; THE LAS
VEGAS METROPOLITAN POLICE
DEPARTMENT; DOE OFFICER I through X,
individually and in their official capacity; and
DOES XI through XX, inclusive,

Defendants.

2:09-CV-01921-LRH-PAL

ORDER

Several motions are currently pending before the court. Defendants Las Vegas Metropolitan Police Department (“LVPD”) and Clark County have each filed motions to dismiss (##11, 19¹), and Plaintiff Cindy Nugent-Davi has filed a motion to amend (#8).²

This is a civil rights dispute arising out of Plaintiff’s arrest and subsequent detention in October of 2007. In the complaint, Plaintiff alleges that on October 11, 2007, she was arrested and taken to the Clark County Detention Center. Plaintiff remained in custody until approximately 3 a.m. the following day. Plaintiff alleges that while in detention, the guards kicked her and beat her

¹Refers to the court’s docket entry number.

²While the parties have filed additional motions, the motions to dismiss and motion to amend are dispositive of the issues now before the court and render the remaining motions moot.

1 with batons. In addition, she states that the guards tasered her, causing her heart to stop.

2 Plaintiff alleges that she was then taken to the hospital where she required numerous
3 stitches and several staples in the back of her head. She also immediately underwent neck and back
4 surgery. While recuperating, an internal affairs officer visited Plaintiff, along with two of the
5 guards that had assaulted her. Plaintiff states that because the presence of the two officers
6 intimidated her, she told the internal affairs officer that she was injured because she fell from her
7 bunk. In response, the internal affairs officer allegedly undid Plaintiff's handcuffs, returned
8 Plaintiff's belongings, and informed Plaintiff that she would not be charged with the crime for
9 which she was originally arrested.

10 As a result of these events, Plaintiff alleges Defendants violated her due process and equal
11 protection rights, her right to be free from excessive force, and her right to be free from cruel and
12 unusual punishment. Plaintiff further alleges that pursuant to policy, practice, and custom,
13 LVMPD and Clark County permitted Clark County Detention Center correctional officers to use
14 excessive and unreasonable force. In addition, Plaintiff alleges the following claims for relief: (1)
15 failure to train and supervise; (2) conspiracy; (3) negligence; (4) negligent supervision and training;
16 and (5) intentional infliction of emotional distress.

17 **I. Legal Standard**

18 Defendants bring their motions pursuant to Federal Rule of Civil Procedure 12(b)(6) for
19 failure to state a claim upon which relief can be granted. Generally, a court's inquiry on a motion
20 to dismiss is limited to the pleadings. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir.
21 2001). The court will convert a motion to dismiss into a motion for summary judgment if the
22 parties submit matters outside the pleadings and the court relies on the material in making its
23 decision. *North Star Int'l v. Arizona Corp. Comm'n*, 720 F.2d 578, 582 (9th Cir. 1983); Fed. R.
24 Civ. P. 12(d). Here, as the parties have presented evidence outside of the pleadings upon which the
25 court must rely in ruling on the motions, the court will construe the motions to dismiss as motions
26

1 for summary judgment.

2 Summary judgment is appropriate only when “the pleadings, depositions, answers to
3 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
4 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of
5 law.” Fed. R. Civ. P. 56(c). In assessing a motion for summary judgment, the evidence, together
6 with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable
7 to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
8 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001).

9 The moving party bears the burden of informing the court of the basis for its motion, along
10 with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*,
11 477 U.S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party
12 must make a showing that is “sufficient for the court to hold that no reasonable trier of fact could
13 find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.
14 1986); *see also Idema v. Dreamworks, Inc.*, 162 F. Supp. 2d 1129, 1141 (C.D. Cal. 2001).

15 To successfully rebut a motion for summary judgment, the non-moving party must point to
16 facts supported by the record which demonstrate a genuine issue of material fact. *Reese v.*
17 *Jefferson Sch. Dist. No. 14J*, 208 F.3d 736 (9th Cir. 2000). A “material fact” is a fact “that might
18 affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
19 242, 248 (1986). Where reasonable minds could differ on the material facts at issue, summary
20 judgment is not appropriate. *See v. Durang*, 711 F.2d 141, 143 (9th Cir. 1983). A dispute
21 regarding a material fact is considered genuine “if the evidence is such that a reasonable jury could
22 return a verdict for the nonmoving party.” *Liberty Lobby*, 477 U.S. at 248. The mere existence of a
23 scintilla of evidence in support of the plaintiff’s position will be insufficient to establish a genuine
24 dispute; there must be evidence on which the jury could reasonably find for the plaintiff. *See id.* at
25 252.

1 **II. Discussion**

2 Both LVMPD and Clark County move for summary judgment on the grounds that they are
3 not properly named defendants. In particular, they argue and present evidence indicating that,
4 contrary to Plaintiff's allegations, Plaintiff was never detained at the Clark County Detention
5 Center. Instead, Plaintiff was detained at the City Jail, which is affiliated with the City of Las
6 Vegas.

7 Plaintiff appears to concede that she was detained at the City Jail. Plaintiff nonetheless
8 argues that she has properly named LVMPD and Clark County as defendants because when the
9 Clark County Detention Center has an overflow of detainees, it sends its detainees to the City Jail.
10 However, Plaintiff has neither presented evidence in support of this allegation nor explained how,
11 as a result of this alleged relationship, either LVMPD or Clark County is legally responsible for the
12 actions of correctional officers at the City Jail.

13 To the extent that Plaintiff believes she has claims against LVMPD arising out of her arrest,
14 the court will permit Plaintiff to amend her complaint to state such claims. Likewise, to the extent
15 Plaintiff believes she has claims against Clark County or the University Medical Center arising out
16 of her treatment at the hospital, the court will permit Plaintiff to amend her complaint. The court
17 will further permit Plaintiff to amend her complaint to assert claims against the City of Las Vegas
18 and/or its individual employees related to her detention at the City Jail.³

19 IT IS THEREFORE ORDERED that LVMPD's Motion to Dismiss (#11) is GRANTED.

20 IT IS FURTHER ORDERED that Clark County's Motion to Dismiss (#19) is GRANTED.

21 IT IS FURTHER ORDERED that, to the extent that Defendant Clark County's Motion to
22 Strike (#32) seeks to strike the "Motion for Proof of Service" on the University Medical Center
23 (#28-6) the motion is GRANTED. Plaintiff has not named the University Medical Center as a
24

25 ³The court emphasizes that nothing in this order should be read to suggest that the court believes that
26 Plaintiff can state compensable claims against these entities or individuals. Instead, this order merely grants
Plaintiff the opportunity to attempt to assert any claims that she believes she may have.

1 party in this action.

2 IT IS FURTHER ORDERED that Clark County's Request for Ruling (#39) is GRANTED.

3 IT IS FURTHER ORDERED that Plaintiff's "Motion for Injunction" (#42) is DENIED as
4 moot.

5 IT IS FURTHER ORDERED that Plaintiff shall have thirty (30) days from the entry of this
6 order to file an amended complaint. If Plaintiff fails to submit an amended complaint within thirty
7 (30) days, this case shall be dismissed.

8 IT IS SO ORDERED.

9 DATED this 1st day of July, 2010.



10
11
12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26